

the Contractor's cost of implementing the change (including any amount attributable to subcontracts). The contract price shall then be reduced by the total estimated decrease in the cost of performance minus fifty percent (50%) of the difference between the amount of such total estimated decrease and any ascertainable costs to the State which must be incurred to apply the VECP to this contract.

- F. Cost reduction proposals submitted under the provisions of any other contract also may be submitted under this contract for consideration pursuant to the terms of this clause.
- G. The Contractor may restrict the right of the State and/or Federal government (hereinafter referred to as "Government") to use any sheet of a VECP or of the supporting data, submitted pursuant to this clause, in accordance with the terms of the following legend if it is marked on such sheet. "This data furnished pursuant to a value engineering incentive clause shall not be disclosed outside the Government, or be duplicated, used, or disclosed, in whole or in part, for any purpose other than to evaluate a value engineering change proposal submitted under said clause. This restriction does not limit the Government's right to use information contained in this data if it is or has been obtained from another source, or is otherwise available, without limitations. If such a proposal is accepted by the State by issuance of a change order under the "Changes" clause of said contract after the use of this data in such an evaluation, the Government shall have the right to duplicate, use and disclose any data pertinent to the proposal as accepted, in any manner and for any purpose whatsoever, and have others so do".

In the event of acceptance of value engineering proposal, the Contractor hereby grants to the Government all rights to use, duplicate or disclose in whole or part, in any manner and for any purpose whatsoever, and to have or permit others to do so, any data reasonably necessary to fully utilize such proposal. Contract modifications made as a result of this clause will state that they are made pursuant to it.

## **ARTICLE VI—CONTROL OF MATERIAL**

**6.1 SOURCE OF SUPPLY AND QUALITY REQUIREMENTS**—The materials used on the work shall meet all quality requirements of the contract. In order to expedite the inspection and testing of materials, the Contractor shall notify the Director of his proposed sources of materials within ten (10) days after the date of award of the contract on a form furnished by the Department. At the option of the Director, materials may be approved at the source of supply before delivery is started. If it is found after trial that sources of supply for previously approved materials do not produce specified products the Contractor shall furnish acceptable materials from other sources.

**6.2 NATURAL MATERIAL SOURCES**—Possible sources of natural materials may be designated on the plans and described in the specifications. The quality of material in such deposits will be acceptable in general, but the Contractor shall determine for himself the amount of equipment and work required to produce a material meeting the specifications. It is understood that it is not feasible to ascertain from samples the limits of an entire deposit, and that variations are usual and to be expected. The Director may order procurement of material from any portion of a deposit and may reject portions of the deposit as unacceptable.

The State may make available to the Contractor the right to take materials from the sources designated on the plans and described in the specifications, together with the right to use such property as may be specified, for plant site, stockpiles and hauling roads.

If the Contractor desires to use material from sources other than those designated, he shall acquire the necessary rights to take materials from the sources and shall pay all costs related thereto, including any which may result from an increase in length of haul. All costs of exploring and developing such other sources shall be borne by the Contractor. The use of material from other than designated sources will not be permitted until representative samples taken by the Director have been approved and written authority is issued for the use thereof.

When material deposits are not designated in the specifications, the Contractor shall provide sources of material acceptable to the Director.

When sources of material or material deposits are provided by the Contractor, the State will assume the cost of processing samples to determine the suitability of the material.

Unless otherwise permitted, pits and quarries shall be so excavated that water will not collect and stand therein.

Upon completion of the work, sites from which material has been removed shall be left in a neat and presentable condition as approved by the Director. Where practicable, borrow pits, gravel pits, and quarry sites shall be located so that they will not be visible from the highway.

**6.3 QUARRIES AND PITS ON STATE LAND**—If suitable rock, gravel, sand, earth and other such material are available on lands owned by the State which will meet the requirements of the work and can be removed without damaging said lands, the Contractor may remove and use same; provided that he shall make written arrangements with the appropriate agency having jurisdiction over said lands to remove and use such material, designating the location from which he will remove the same, the purpose for which it will be used and the approximate quantity involved. The Contractor shall not remove any such material until a copy of the written arrangement is submitted to the State. The State reserves the right to direct the Contractor's operations and insure maximum utilization of available material and to set grading limits at any time to prevent damage to abutting private or public property.

**6.4 RIGHTS IN AND USE OF MATERIALS FOUND ON THE WORK**—With the approval of the Director, the Contractor may use on the project any stone, gravel, sand, or other material determined suitable by the Director, as may be found in the excavation. The Contractor will be paid both for the excavation of such materials at the corresponding contract unit price and for the pay item for which the excavated material is used. He shall replace at his own expense with other acceptable material all of that portion of the excavation material so removed and used which was needed for use in the embankments, backfills, approaches, or otherwise. No charge for the materials so used will be made against the Contractor. The Contractor shall not excavate or remove any material not within the grading limits, as indicated in the plans, without written authorization from the Director.

Unless otherwise provided, the material from any existing old structure may be used temporarily by the Contractor in the erection of the new structure.

**6.5 SAMPLES, TESTS, CITED SPECIFICATIONS**—All materials will be inspected, tested and accepted by the Director before incorporation in the work. Any work in which untested materials are used without approval or written permission of the Director shall be performed at the Contractor's risk and may be considered unacceptable and unauthorized and will not be paid for. When requested by the Director, the Contractor shall furnish certificates of compliance stating that the materials used in the work conform to the requirements of these specifications.

Unless otherwise designated, tests in accordance with the most recent standard

methods of AASHTO or ASTM, as of the date of advertisement for bids, will be made by and at the expense of the State. Samples will be taken by a qualified representative of the State. All materials being used are subject to inspection, test or rejection at any time prior to incorporation into the work. Copies of all test results will be furnished to the Contractor at his written request.

The Contractor shall furnish samples required by the State without charge, provide every facility for the securing of material samples, and provide means and assist in the verification of all scales, measures and other devices which he operates.

The State reserves the right to retest all materials which have been tested and accepted at the source of supply after the same have been delivered, prior to incorporation into the work and to reject all materials which, when tested, do not meet the requirements of the contract.

**6.6 PLANT INSPECTION**—The Director may undertake the inspection of materials at the source.

In the event plant inspection is undertaken the following conditions shall be met:

- (1) The Director shall have the cooperation and assistance of the Contractor and the producer with whom the Contractor has contracted for materials.
- (2) The Director shall have full entry at all times to such parts of the plant as may concern the manufacture or production of the materials being furnished.
- (3) If required by the Director, the Contractor shall arrange for an approved building for the use of the inspector; such building to be located conveniently near the plant, independent of any building used by the material producer, and conforming to requirements of the plans and specifications.
- (4) Adequate safety measures shall be provided and maintained by the Contractor.
- (5) For portland cement concrete, asphaltic concrete and aggregate crushing plants, the Contractor shall furnish a suitable building adjacent to the plant for the purpose of testing materials. In addition, the Contractor shall furnish for use by the Director laboratory scales, a motorized shaker, sieves and an oven or equivalent equipment approved by the Director.

When plant inspection is desired by the State and the State so informs the Contractor, the Contractor shall notify the Director twenty-four (24) hours prior to the beginning of such operations.

If the Contractor intends to use a plant or facility which has not been in use and has not been previously inspected and approved, the Contractor shall notify the Director at least ten (10) days before operating such plant or facility.

**6.7 STORAGE OF MATERIALS**—Materials shall be so stored as to assure the preservation of their quality and fitness for the work. Stored materials, even though approved before storage, may again be inspected prior to their use in the work. Stored materials shall be located so as to facilitate their prompt inspection. Approved portions of the Department's property may be used for storage purposes and for the placing of the Contractor's plant and equipment, but any additional space required therefor must be provided by the Contractor at his expense. Private property shall not be used for storage purposes without written permission of the owner or lessee, and if requested by the Director, copies of such written permission shall be furnished to him. All storage sites shall be restored to their original condition by the Contractor at his expense.

**6.8 HANDLING MATERIALS**—All materials shall be handled in such manner as to preserve their quality and fitness for the work. Aggregates shall be transported from the storage site to the work in vehicles so constructed as to prevent loss or segregation of materials after loading and measuring in order that there may be no inconsistencies in the quantities of materials intended for incorporation in the work as loaded, and the quantities as actually received at the place of operations.

**6.9 UNACCEPTABLE MATERIALS**—All materials not conforming to the requirements of the specifications at the time they are used shall be considered unacceptable and all such materials will be rejected and shall be removed immediately from the site of the work unless otherwise instructed by the Director. No rejected material, the defects of which have been corrected, shall be used until approval has been given.

**6.10 DEPARTMENT-FURNISHED MATERIAL**—The Contractor shall furnish all materials required to complete the work, except those specified to be furnished by the Department.

Material furnished by the Department will be delivered or made available to the Contractor at the points specified in the specifications.

The cost of handling and placing all materials after they are delivered to the Contractor are included in the contract price for the item in connection with which they are used.

The Contractor is responsible for all material delivered to him.

**6.11 TRADE NAMES AND ALTERNATIVES**—For convenience of designation, certain equipment, articles or materials may be designated on the plans or in the specifications under a trade name or the name of a manufacturer and his information catalogue. The use of alternate equipment, articles or materials of equal quality and characteristics for the purpose intended will be permitted, upon approval of the Director, in accordance with the following requirements.

- A. QUALIFICATION BEFORE BID OPENING**—When the specifications and/or plans specify brand materials or equipment by brand name to indicate a quality, style, appearance, or performance, the bidder will be assumed to have based his bid on one of the specified products, and where such proprietary product is specified, an alternate brand may be qualified if found equal or better by the Director. Bidders requesting qualification of alternate proprietary products must submit a request to the Director for review and approval at the earliest date possible, but in any event, such request must be received at the Director's office not later than ten (10) days before the bid opening date, not including the bid opening date.

It shall be the responsibility of the bidder to submit, in quintuplicate, sufficient evidence based upon which a determination can be made by the Director that the alternate brand is qualified. The evidence shall be transmitted with a covering letter which shall list the evidence submitted and the items for which the substitution is requested.

If the evidence accompanying a request for substitution is insufficient to qualify a particular model, the request shall be denied provided that further evidence may be submitted to qualify the item five (5) days prior to the bid opening date if the initial request was made prior to the deadline set above.

- B. SUBSTITUTION AFTER BID OPENING**—Substitution of material or equipment will not be allowed after the bid opening date except under the following circumstances:

- (1) A specified or prequalified item is delayed by a lengthy strike in the factory or

other unforeseeable contingency beyond the control of the Contractor which would cause an abnormal delay in the project completion.

- (2) A specified or prequalified item is found to be unusable due to change or other circumstances.
- (3) If the Contractor is willing to provide a more recently developed or manufactured item of material or equipment of the same manufacturer which the Director determines to be equal or better than the one specified or prequalified.

A substitution request, regardless of reason, shall be fully explained in writing, by the Contractor and shall include his justification for said request, the quantities and unit prices involved, quotations and such other documents as are deemed necessary to support the request. Substitutions allowed pursuant to this provision, with the exception of the circumstance described under (B)3, do not qualify as value engineering. Any savings in cost will accrue to the State except where value engineering applies, and any additional cost for the substituted items will be paid for by the Contractor.

The above shall not be construed to mean that substitution for brand name specified materials and equipment will be allowed; the Director reserves the right to deny any request he deems irregular or not in the best interest of the State.

The burden of proof as to the comparative quality and suitability of alternate equipment, articles or materials shall be upon the Contractor and he shall furnish, at his own expense, all information necessary or related thereto as is required by the Director. The Director shall be the sole judge of the comparative quality and suitability of alternates and his decision is final.

The above provisions shall not be construed as permitting the use of alternates for equipment, articles or materials which are not designated under a trade name or the name of a manufacturer and his information catalogue and for which specifications are set forth.

**6.12 AMERICAN PRODUCTS PREFERENCE**—Preference shall be given to American products, materials and supplies in accordance with Section 103-24, H.R.S.

**6.13 PREFERENCE FOR HAWAII PRODUCTS**—In case Hawaii products, as defined in Section 103-41, H.R.S., are available and meet minimum specifications, the Director will describe, in the specifications for the work to be performed, the products listed in the Hawaii products list established pursuant to Section 103-42, H.R.S., which may be used in the work to be performed. Any bidder utilizing Hawaii products may claim the preferences stated in Section 103-43, H.R.S., provided that such bidder designates in his bid the Hawaii products and the classes hereof and provided also that such products are qualified and registered with the Hawaii products list. For the purpose of determining the lowest bid price only, the provisions of Section 103-43, H.R.S., shall also apply. Any contract awarded or executed in violation of said Section 103-43 shall be void and no payment shall be made on account of such contract.

This Section shall not apply to contracts when its application will disqualify the State from receiving federal funds or aid.

## **ARTICLE VII—LEGAL RELATIONS AND RESPONSIBILITY TO**

### **PUBLIC**

**7.1 LAWS TO BE OBSERVED**—The Contractor shall at all times observe and comply with all Federal, State, County and City laws, ordinances, rules and regulations which in any